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Public Hearing before the Joint Committee on Government Administration and Elections

Raised Bill No. 1188: An Act Creating a Division of Administrative Hearings

Good morning, Senator Slossberg, Representative Morin and members of the Government Administration and Elections Committee. I am J. Allen Kerr, Jr., chief human rights referee at the Commission on Human Rights and Opportunities. Thank you for the opportunity, on my behalf and that of my fellow referees Attorneys Thomas C. Austin, Jr., Donna Maria Wilkerson Brilliant and Jon P. FitzGerald, to submit oral and written testimony on Senate Bill 1188, An Act Creating a Division of Administrative Hearings.

The human rights referees support consolidating administrative hearings into a centralized hearing office, such as the Division of Administrative Hearings and the inclusion of the Commission on Human Rights and Opportunities and the human rights referees in such a program. As demonstrated by the success of a centralized office in nearly thirty other states, through the use of full-time, experienced and trained hearing officers, a centralized hearing office can: (1) ensure impartial administration and conduct of hearings of contested cases; (2) ensure greater uniformity and consistency in the application of the Uniform Administrative Procedure Act by state agencies; (3) facilitate and enhance public trust and confidence in the exercise of regulatory and disciplinary powers conferred upon agencies and boards; and (4) achieve long term costs savings. Such a centralized office would also be consistent with Governor Molloy's desire for the simplification and consolidation of state agencies.

We also offer our support from the unique perspective of the human rights referees who have attempted to provide the best possible administrative adjudication in Connecticut's current bifurcated environment-an environment where executive branch administrative adjudication is split amongst part time hearing officers, agency staff attorneys, non attorney employees and lawyers who are gubernatorial appointees. For the referees, who are gubernatorial appointees, the proposal would afford a much needed measure of institutional stability that would benefit the parties, the attorneys (often state employees) who represent them and the referees. Almost annually it seems as if the referees are set adrift on a veritable sea of uncertainties with regard to our numbers, terms, reappointment and compensation, sometimes via rumor and other times through proposed legislation. As creatures of statute without a voice in state government in any traditional sense each new uncertainty is necessarily disruptive regarding our planning and productivity.

In 1998, in response to the serious backlog of cases that had resulted from a system that had employed part-time per diem attorney hearing officers, the legislature passed P.A. 98-

245, replacing the contractual hearing officers with seven full-time human rights referees. In 2001, Public Act 01-9 (June Special Session) reduced the number of referees from seven to five. In 2004, Public Act 04-2 (May Special Session.) increased the number of referees from five to seven. In 2009, Public Act 09-7 (September Special Session), reduced the number of referees from 7 to 5 effective October 1, 2009 and further reduced from 5 to 3 effective July 1, 2011. As a result of the uncertainty generated by these bills as they were pending in the legislature, parties were filing motions to postpone trials and other proceedings until it was known how many referees there would be, who they would be and whether they would be included in the next budget. For these same reasons, the referees have been limited in our ability to engage in long range planning, and discouraged in pursuing (at our own expense) continuing education. By including the referees in a Division of Administrative hearings headed by an empowered Chief Administrative Law Adjudicator, the public, the bar and the referees would be the beneficiaries of a more structured and permanent environment..

Commensurate with the aforementioned "job security" uncertainties there were times also when reappointments were not addressed and referees served for more than a year as holdovers, and abrupt changes in pay grade classification were made which saw the referees compensation initially tied to that of family law magistrates, then decoupled and placed in an MP-62 classification (resulting in a substantial retroactive pay decrease) and finally in the VR 99 classification with a salary fixed indefinitely by statute. The proposed legislation would also add stability and predictability in these important areas, again allowing the referees to better concentrate on the public's business.

Lastly, we have extensive experience in research and in writing comprehensive rulings and decisions. Similar to judges, we have also attended seminars in judicial writing presented by judicial department staff. Further, in recognition of our knowledge and skills, in 2002, the legislature expanded our jurisdiction beyond discrimination cases to include "whistleblower retaliation" cases brought under General Statutes § 4-61dd. In the all important whistleblower arena, the referees not only adjudicate cases, but also act as the intake office and even write the regulations (subject to legislative approval) under which Connecticut's whole whistleblower retaliation construct functions. Because of our experience we believe our inclusion in the proposed consolidation will help to insure the success of a new Division of Administrative Hearings. We would add that our previously referenced reduction from 5 referees to 3 scheduled to take effect on July 1, 2011 will unfortunately blunt the positive impact we hope to bring to the new Division of Administrative Hearings. While we are currently 5 in number only 4 are now active and only those 4 are seeking reappointment. A reduction from 5 to 4 will still effectuate a budget friendly twenty percent reduction in our numbers but will allow us to properly handle our current busy caseload and an expected influx from a recession driven increase in EEOC filings and legislative initiatives geared to increasing our jurisdiction in "whistleblower retaliation". We would therefore ask your support on behalf of a statutory amendment to limit the reduction in our numbers on July 1, 2011 from 5 to 4 as opposed to 5 to three.

My colleagues and I again thank you for the opportunity to present testimony before the Joint Committee on Government Administration and Elections.